

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

APRIL 13, 2000

IN RE:

**COMPLAINT OF DISCOUNT
COMMUNICATIONS, INC.
AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.**

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DOCKET NO. 00-00230

**PRE-HEARING OFFICER'S ORDER REFLECTING ACTION
TAKEN AT THE APRIL 5, 2000 STATUS CONFERENCE**

At a Status Conference in this matter held before the Directors of the Tennessee Regulatory Authority (the "Authority" or "TRA") on March 28, 2000, the General Counsel was appointed to serve as a Pre-Hearing Officer to resolve any pre-hearing disputes, including any failure to comply with Compromise Agreement entered into between the parties, Discount Communications, Inc. ("Discount") and BellSouth Telecommunications, Inc. ("BellSouth") during the Status Conference. As a part of the Compromise Agreement, the parties agreed to the following:

Beginning April 4, 2000 and continuing until and including the date the TRA makes a final ruling on all proposed issues submitted by Discount Communications to the TRA pursuant to and in accordance with the Agreed Procedural Order jointly filed by Discount Communications and BellSouth on or about March 29, 2000, Discount Communications shall pay into the escrow account established by agreement of the parties the amount of \$1,500 by 5:00 p.m. each and every Tuesday, Wednesday, Thursday, and Friday and \$4,500 each Monday. (Paragraph 3.)

POSTED
4-14-00

This matter came before the Pre-Hearing Officer upon BellSouth's *Motion to Compel Disclosure or, in the Alternative, to Find Discount Communications in Violation of the Compromise Agreement* ("BellSouth's Motion") filed on April 5, 2000. By agreement of the parties, a special Status Conference was held on April 5, 2000, to hear comments from the parties concerning BellSouth's Motion. The Status Conference was recessed at one point and reconvened later on that day due to a ongoing pre-hearing conference being held at the same time in another docket.

Attending the first part of the Status Conference were the following parties:

Discount Communications, Inc. ("Discount") – **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

BellSouth Telecommunications, Inc. ("BellSouth") – **Patrick Turner**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300.

In support of BellSouth's Motion, counsel for BellSouth stated that the parties had made several attempts but had been unable to reach an agreement concerning the establishment of an escrow account pursuant to the Compromise Agreement. According to counsel, BellSouth had proposed that either it or Mr. Walker's law firm could act as the escrow agent. Both of these proposals were rejected by Discount. Counsel for Discount responded that he had received that day (April 5th) a letter indicating that Discount had established an escrow account through an existing account with A.G. Edwards Company. Counsel further confirmed that Discount had made payment to that escrow account in accordance with the Compromise Agreement. BellSouth argued that the account in question did not comply as a legal escrow agreement between the parties because the escrow account pre-existed this proceeding and did not mention BellSouth or this proceeding. Counsel for Discount stated that he had asked his client to establish a new

escrow account and that he expected to learn later that day whether that new account had been established.

In view of the fact that counsel for Discount needed additional time to determine whether his client had established the new escrow account and the because this Status Conference was being held during a recess in a pre-hearing conference in another docket, the Pre-Hearing Officer recessed the Status Conference until the conclusion of that pre-hearing conference. This recess permitted counsel for Discount to contact his client concerning the new escrow account.

On April 4, 2000, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a Petition for Information. Because the Consumer Advocate's Petition for Information might be discussed during the Status Conference, the Consumer Advocate was notified of the Status Conference. The Status Conference was reconvened later in the afternoon on April 5, 2000. Counsel for BellSouth and for Discount were in attendance. **Vance Broemel**, Esquire, attended the Status Conference on behalf of the Consumer Advocate.

Upon reconvening the Status Conference, counsel for Discount announced that his client had drafted an escrow agreement and was in the process of sending to him a copy of the agreement via facsimile transmission. The agreement, however, did not provide for a signature of a representative of A.G. Edwards. Counsel for BellSouth expressed concern over being able to agree to the use of the new account as an escrow account. Upon further discussion, it was established that counsel for BellSouth was not concerned about the proposed escrow agent, A. G. Edwards, as much as he was concerned about the language in the proposed escrow agreement and the added delay that may result in negotiating certain

language. The Pre-Hearing Officer inquired whether BellSouth would object to the law firm currently representing Discount acting as an interim escrow agent, pending BellSouth's review and approval of the proposed escrow agreement. Counsel for BellSouth and counsel for Discount did not object to this arrangement and the Pre-Hearing Officer directed counsel for Discount to establish an escrow account with his law firm of Boulton, Cummings, Conners & Berry, who would act as interim escrow agent for receipt of payments by Discount until the parties agreed to the language of an escrow agreement.


The parties and the Consumer Advocate then discussed the filing of the Consumer Advocate's Petition for Information. The Consumer Advocate stated that he wanted to obtain the information requested prior to making a determination of whether to intervene in this proceeding. Counsel for Discount stated that he was preparing a response to the Consumer Advocate's Petition. Counsel for BellSouth stated that BellSouth would not respond until the Authority determined whether the Petition is a proper request. The Pre-Hearing Officer facilitated a discussion between the parties and the Consumer Advocate concerning the Petition for Information but took no action because he did not interpret his grant of authority to include authority to act upon the Petition for Information. Based upon the foregoing,

IT IS THEREFORE ORDERED THAT:

1. BellSouth's *Motion to Compel Disclosure or, in the Alternative, to Find Discount Communications, Inc. in Violation of the Compromise Agreement* is denied, without prejudice, based upon the agreement of the parties that the law firm of Boulton, Cummings, Conners & Berry will act as interim escrow agent for receipt of payments by Discount Communications, Inc. until the parties have agreed to the language of an escrow

agreement or until such time as the funds in the escrow account are required to be dispursed.

2. Any Party aggrieved by this Order may file a Petition for Reconsideration with the Authority within fifteen (15) days of the date of this Order.



RICHARD COLLIER
ACTING AS PRE-HEARING OFFICER

ATTEST:



K. David Waddell, Executive Secretary